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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F NO. 195/176/15-RA

Date of Issue: 21.09.2020

⁵⁸⁰⁻²⁰²⁰
ORDER NO. C.EX (SZ) /ASRA/Mumbai DATED 08.08.2020 OF THE
GOVERNMENT OF INDIA PASSED BY SMT SEEMA ARORA, PRINCIPAL
COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE
GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL
EXCISE ACT, 1944.

Applicant : M/s Biocon Limited.
20th, K.M. Hosur Road,
Electronic City, Bangalore- 560 100.

Respondent: The Commissioner of CGST, Bengaluru.

Subject : Revision Application filed, under section 35EE of the
Central Excise Act, 1944 against the Orders-in-Appeal
No. 41/2015/LTU dated 26.03.2015 passed by the
Commissioner (Appeals), LTU, Bangalore.

ORDER

This revision application has been filed by M/s Biocon Limited, Bangalore-560100(hereinafter referred to as "the applicant") against the Order-in-Appeal No. No. 41/2015/LTU dated 26.03.2015 passed by the Commissioner (Appeals), LTU, Bangalore.

2. Brief facts of the case are that the applicant is a registered dealer holding Central Excise Registration No. AAACB7461RXD001. The applicant purchased duty paid goods viz. Glucosamine Sulphate Sodium Chloride USP from the manufacturer of goods i.e. M/s Bayir Chemicals, Bangalore who manufactured the said goods and supplied to the applicant on payment of central excise duty vide central excise invoice Nos. 63/16.07.2013 and 64/18.07.2013. The total Central Excise Duty paid vide above mentioned invoices amounts to Rs. 4,63,964/- (Rupees Four Lakh Sixty Three Thousand Nine Hundred Sixty Four Only). The applicant has submitted that the goods covered under the abovementioned invoices were exported by them and thereafter they had filed the claim for rebate of the central excise duty to the jurisdictional LTU Department on 26.09.2013. The Department issued the show cause notice to the applicant proposing the rejection of the impugned rebate claim on the ground that the applicant had not followed the procedure under Notification No. 19/2004-CE(NT) dated 06.09.2004 in as much as the applicant being merchant exporter did not get the export consignment examined and sealed at the place of dispatch by the Central Excise Authorities and hence goods could not be correlated with the goods procured from the manufacturer. The Adjudicating Authority vide Order in Original No. 32/R/2014/LTU dated 18.02.2014 rejected the rebate claim on the grounds made out in the show cause notice.

3. Aggrieved by the above decision, the applicant filed an appeal before the Appellate Authority. The Appellate Authority vide impugned Order in Appeal upheld the Order in Original and disposed off the appeal filed by the

applicant. The Appellate Authority while passing the impugned order observed that :-

3.1 Being merchant exporter, the applicant had not got their export consignment physically examined and sealed at the place of dispatch as required under Notification No. 19/2004-CE(NT) dated 06.09.2004.

3.2 The applicant further preposterously claim that the correlation between goods procured and exported had been clearly established.

3.3 The establishment of the nature / identity of the goods claimed to have been exported, is a substantive requirement.

3.4 The assessment by the Customs Authority is paper based and not based on physical verification of goods exported.

3.5 The jurisdictional superintendent of central excise had only endorsed the relevant duty payment on the triplicate copies of the ARE-1s. AS the relevant goods were not examined and sealed by the said officer, there is no certification, specially, relating to the nature and the identity of the goods vis-à-vis the relevant documents.

3.6 The applicant had not furnished any documents evidencing that they have specifically followed the procedure detailed in para 8.3 and 8.4 of the CBEC Circular No. 294/10/97-CX dated 30.01.1997.

4. Aggrieved by the said order in appeal, the applicant filed the instant Revision Application on the following grounds :-

4.1 The appellate authority had denied the rebate only on the ground that self-examination and self-sealing is resorted by them while exporting the goods.

4.2 The department had not disputed the fact that the goods were exported by them were duty paid and were purchased from a manufacturer.

4.3 The lower authorities have not appreciated that they had followed the procedure prescribed by CBEC Circular No. 294/10/97-CX dated 30.01.1997 and No. 428/61/98-CX dated 02.11.1998 and that the Superintendent, Central Excise had endorsed the triplicate copy of ARE-1 as per the procedure laid down in the above circular.

4.4 The correlation between goods procured from manufacturer and the goods exported is established as the duty payment made by the manufacturer had been endorsed by the Range Superintendent. Also the correlation is established from the Central Excise Invoice copies raised by manufacturer and the export invoices and corresponding packing list.

4.5 The department had rejected the rebate claim merely for technical / venial lapses and substantive benefit had been denied for mere technical infractions.

4.6 The applicant had relied upon following judgements in support of their defence :-

- a) CST Vs. Auriaya Chamber of Commerce, 1986(25) ELT 867 (SC)
- b) Fort India Pvt. Ltd. Vs. Asstt. Commr, 2011 (272)ELT 353 (Mad.)
- c) UOI Vs. Suksha International & Nutan Gems, 1989(39) ELT(503)

(SC)

d) Mangalore Chemicals & Fertilizers Ltd. Vs. Dy. Commr., 1991(55)ELT 437 (SC).

4.7 The goods were duly assessed by the Customs Authority.

4.8 The department is duty bound to grant interest under Section 11BB of the Central Excise Act, 1944.

5. The personal hearing in the matter was granted on 31.10.2018 and the same was attended by Shri N. Anand, Advocate on behalf of the applicant before my predecessor. In view of change in the Revision Authority, a final hearing in the matter was granted on 09.12.2019 to the applicant as well as respondent. However, no one attended the same. Hence the matter is taken up for decision on the basis of the documents available on records and the submissions of the applicant made during personal hearing held on 31.10.2018 which is also on record.

6. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal.

7. Government observes that the basic issue involved in the case is whether the Appellate Authority was correct in rejecting the rebate claim, as the goods exported by the applicant as a merchant exporter, were not inspected / examined by the Jurisdictional Central Excise Officers at the place of dispatch as required under Notification No. 19/2004-CE(NT) dated 06.09.2004.

8. In this regard, Government finds that the permission for facility of self sealing under Notification No. 19/2004-CE (NT) dated 06.09.2004 was sought by the applicant. However, the same was rejected by the Department vide letter C. No. V/30/11/2013 GLT 1 dated 21.11.2013 i.e. after the export has been effected by the applicant and hence does not have any significance in the case.

9. It is further observed that where there is no examination by the jurisdictional officers of Central Excise, there are many cases where Government of India has conclusively held that the failure to comply with requirement of examination by jurisdictional Central Excise Officer in terms of Board Circular No.294/10/97-Cx dated 30.01.1997 may be condoned if the exported goods could be co-related with the goods cleared from the factory of manufacture or warehouse. Government places its reliance on para 11 of GOI Order Nos. 341-343/2014-CX dated 17.10.2014 (reported in 2015 (321) E.L.T. 160(G.O.I) In RE: Neptunus Power Plant Services Pvt. Ltd. In this case, in order to examine the issue of corelatibility, Government made sample analysis of the exports covered vide some of the shipping bills and applying the same analysis to the instant case, Government finds that in shipping bill No. 9145545 dated 15.12.2010 there is cross reference of ARE-1 No.855 dated 11.11.2010 and vice-versa. Moreover, Government observes that original adjudicating authority in Order No. RBO/1190/RAS/11-12 dated 19.03.2012 has categorically mentioned that the description and weight of the consignment exported tallied with Bill of lading / Airway bill, Central Excise Invoice, ARE-1, Shipping Bill, AWB/Mate Receipt and other relevant document. The original authority also certified that the assessee has paid the Central Excise duty by debiting

the same in their Cenvat Account which is certified by the Range Supdt. and that the claimant have produced the Original, Duplicate and Triplicate copies of ARE-1s and have also produced all the required export documents. Thus it is clear that in the above cases duty paid nature of the goods exported by the applicant stands established in order of the original authority itself. Further, description, weight and quantities exactly tally with regard to description mentioned in ARE-1 and other export documents including Shipping Bill and export invoices. As such there is sufficient corroboratory evidence to establish that goods covered under impugned excise documents have actually been exported vide impugned export documents. Further, endorsement of customs officer at the port of export, on part B of all the aforesaid three ARE-1s also conclusively support the same observation.

10. Government also notes that, while allowing the Revision application in favour of the applicant, Government at para 12 of its aforementioned Order observed as under:-

"In this regard Govt. further observes that rebate/drawback etc. are export-oriented schemes, A merely technical interpretation of procedures etc. is to be best avoided if the substantive fact of export having been made is not in doubt, a liberal interpretation is to be given in case of any technical lapse. In Suksha International v. UOI - 1989 (39) E.L.T. 503 (S.C.), the Hon'ble Supreme Court has observed that, an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with the other. In the Union of India v. A.V. Narasimhalu - 1983 (13) E.L.T. 1534 (S.C.), the Apex Court also observed that the administrative authorities should instead of relying on technicalities, act in a manner consistent with the broader concept of justice. Similar observation was made by the Apex Court in the Formica India v. Collector of Central Excise - 1995 (77) E.L.T. 511 (S.C.) in observing that once a view is taken that the party would have been entitled to the benefit of the notification had they met with the requirement of the

concerned rule, the proper course was to permit them to do so rather than denying to them the benefit on the technical grounds that the time when they could have done so, had elapsed. While drawing a distinction between a procedural condition of a technical nature and a substantive condition in interpreting statute similar view was also propounded by the Apex Court in *Mangalore Chemicals and Fertilizers Ltd. v. Dy. Commissioner* - 1991 (55) E.L.T. 437 (S.C.). In fact, as regards rebate specifically, it is now a title law that the procedural infraction of Notifications, circulars, etc., are to be condoned if exports have really taken place, and the law is settled now that substantive benefit cannot be denied for procedural lapses. Procedure has been prescribed to facilitate verification of substantive requirement. The core aspect or fundamental requirement for rebate is its manufacture and subsequent export. As long as this requirement is met other procedural deviations can be condoned.-This view-of condoning procedural-infractions in favour of actual export having been established has been taken by Tribunal/Govt. of India in a catena of orders, including *Birla VXL Ltd.* - 1998 (99) E.L.T. 387 (Tri.), *Alpha Garments* - 1996 (86) E.L.T. 600 (Tri.), *T.I. Cycles* - 1993 (66) E.L.T. 497 (Tri.), *Atma Tube Products* - 1998 (103) E.L.T. 270 (Tri.), *Creative Mobus* - 2003 (58) R.L.T. 111 (G.O.I.), *Ikea Trading India Ltd.* - 2003 (157) E.L.T. 359 (G.O.I.) and a host of other decisions on this issue”.

11. Further, the Government also notes that there are catena of judgements that the substantial exports benefits should not be denied on mere procedural infractions until and unless there is some evidence to point out major violation to defraud the Government revenue. Further, Government has decided identical issues in a catena of its judgements, wherein it has been held that in case where the goods could not be exported directly from factory or warehouse in terms of the Notification No. 19/2004-C.E.(N.T.) dated, substantial compliance of aforesaid circular dated 30.01.1997 and resultant export of duty paid goods, rebate claims have to be held admissible. In view of above position, Government holds that rebate


claims are not deniable to the applicant on the grounds that the goods could not be exported directly from factory or warehouse in terms of Condition 2(a) of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004.

12. In view of above discussion, the Government opines that the correlation of the goods can be established from the Batch No., Description of goods, Quantity, Invoice Nos. on ARE-1 and the endorsement of Customs Authority on ARE-1s as well as relevant shipping bills. It is further observed that the Jurisdictional Range Superintendent vide his letter dated O.C. No. 880/2013 dated 12.09.2013 had certified that the goods cleared under said Central Excise Invoices were duty paid and also had endorsed the triplicate copies of respective ARE-1s to that effect as required under the procedure laid down in the CBEC Circular No. 294/10/97-CX dated 30.01.1997. However, neither the adjudicating authority nor the Appellate Authority discussed the correlatability of goods cleared from factory premises of the manufacture and subsequent export of impugned duty paid goods as discussed above in their respective findings. Instead, the impugned rebate claims were summarily rejected on the ground that the goods were cleared from the premises other than factory premises and were cleared without following self sealing procedure stipulated under Notification No. 19/2004-CE(NT) dated 06.09.2004 and also procedure prescribed under CBEC Circular No. 294/10/97-CX dated 30.01.1997. Neither the original authority nor the appellate authority disputed the fact of export of goods anywhere in their respective orders. cursory glance at the documents appended to Revision Application reveals that material facts relevant to the export such as Description, quantity, weight etc. are tallying with the relevant documents such as ARE-1s and Shipping Bills. The AREs-1 duly certified by Central Excise Officers and Customs Officers leave no doubt that duty paid goods cleared from factory have been exported as there is no reason to doubt the endorsement of Customs Officers on the ARE-I Form. Therefore, it is incumbent upon the respondent department to verify the documents furnished by the applicant so as to satisfy that goods exported were not the one cleared from the factory.

13. In view of discussion and findings elaborated above Government sets aside the Order-in-Appeal No. 41/2015/LTU dated 26.03.2015 passed by the passed by the Commissioner (Appeals), LTU, Bangalore. The Original Authority is directed to verify the documents to be submitted by the applicant consistent with observation made by this Authority supra. The applicant is directed to submit all the documents before original authority for verification. The original authority will pass orders, after giving due opportunity of personal hearing also to the applicant in accordance with law, as expeditiously as possible.

14. The revision application is disposed of in the above terms.

15. So, ordered.


(SEEMA AORORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No./2020-CX (SZ) /ASRA/Mumbai DATED .07.2020.

To,

M/s Biocon Limited.
20th, K.M. Hosur Road,
Electronic City, Bangalore- 560 100.

Copy to:

1. The Commissioner of CGST & CX (Bengaluru South), C.R. Building, Queen's Road, Bengaluru- 560 001.
2. The Commissioner of CGST, Bengaluru Appeals-I, Traffic & Transit Management Centre, BMTC Bus Stand Complex, Hal Airport Road, Domluru, Bangalore- 560 071.
3. The Assistant Commissioner, Bengaluru South Division-8, 7th Floor, Kendriya Sadan, 'A' Wing, Koramngala, Bengaluru- 560 034.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard file
6. Spare Copy.